

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on February 13, 2003 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 265, SB 356, 2/7/2003
Executive Action:

HEARING ON SB 265, SB 356

Sponsor: SEN. DUANE GRIMES, SD 20, CLANCY

Proponents: Dallas D. Erickson, Montana Citizens for Decency
through Law, Inc.
Duane Halverson, Townsend
Edie Ward, Three Forks
David Ford, Minister, Church of Christ, Three
Forks
David Carroll, Community Bible Churches
Rod Palmer, Citizens Against Sexual Exploitation
Jackie Smith, Billings
James Ward, Three Forks
Chris Jones, Director of the Coalition for
Community Responsibility
Sharon Neilson, Townsend
Susan Keddy Jones, Missoula
Charlotte Lewis, Townsend
Dawn Thompson, Townsend
Shannon Bennett, Missoula
Bob Bottomly, Townsend
William Rockwell, Townsend
Stuart Galgerud, Willow Creek
Tina Galgerud, Willow Creek
Judith Rockwell, Townsend
Clayton Rockwell, Townsend
Pamela Rockwell, Townsend
Betty Whiting, Montana Association of Churches
Gilda Clancy, Montana Eagle Forum
Lani Candelora, Montana Catholic Conference
Steven Geisser, Townsend
Kristi Geisser, Townsend
Julie Milliam, Executive Director of Montana
Family Coalition
Kenneth Romo, Townsend
Janis Clyde Mackenson, Townsend
Randy Nielsen, Townsend
REP. SCOTT MENDENHALL, HD 39, CARDWELL

Opponents: Mark Staples, Montana Tavern Association
Dave Ohler, Self
Virginia Clark, Sagebrush Sam's
Shirl Nelson, Planet Lockwood
Bruce Fowler, Moulan Rouge, Missoula
Laurie Watkins, Moulan Rouge, Missoula

Alicia Riesinger, Exotic Dancer
Eva Zazac, Moulan Rouge
Heather Farlan-Anderson, Fred's Lounge, Missoula
Jody Wians-Gill, Cocktail Waitress at Fred's
Lounge
James Halo, Billings
Mike Fellows, Missoula
Melvin Beattie, Nature's Action Committee
Rich Bfaff, Missoula
Erin Joseph, Sagebrush Sam's
David Blackwell, Self
David Hanson, Owner of Teasers
Jacqueline Lenmark, Montana Coalition for Privacy
and Free Expression
Scott Crichton, American Civil Liberties Union
Edward Reap, Self

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, CLANCY, introduced SB 265. He remarked our pluralistic society requires a balance of diverse rights and liberties in order for various groups to coexist peacefully. It is the Legislature's job to ensure those rights and liberties do not usurp or preempt one another. This bill ensures that the social fabric of Montana's small communities stays intact. Regulating strip clubs is about defining the boundaries of an activity that has repercussions for everyone in the community. A strip club opened in his district in a highly visible and prominent gateway to our state which is near Three Forks. Up to now, these types of establishments have existed largely near truck stops. Not only is it located at one of the major junctures that first time visitors to Montana will see during the Bicentennial, it is also aggressively and offensively advertised. The local people see this as an affront to the perception they want their community to have. The bold advertising undermines healthy attitudes about sex in our communities. This blatant message is an absolute paradox to our efforts in this committee to curb domestic violence, sexual assaults, alcohol related problems, and other social maladies. It strongly suggests that prostitution and infidelity are normal and to be accepted. It is unmistakable that this establishment will erode the safety and health rights of others in the community.

There will be three policy decisions for this committee to address. Senate Bill 265 presents two of those policy concepts. A large portion of the language in this bill is also used elsewhere in the code. The same law found in SB 265 has been in effect for over a decade in the City of Billings. It has withstood the scrutiny of the Montana Supreme Court and other

challenges. Lines 18-23 on the first page of the bill appear to restrict any and all entertainment to a platform. This should be changed to exclude any normal forms of entertainment. It should include entertainment related to nude dancing and other obscene matters. The second section of the bill states all live entertainment permitted under this subsection must be performed on a platform. He proposed an amendment which would strengthen the language to state "an exclusive area ten feet from the patrons".

One policy issue involves the regulation of the activity itself. Another policy issue is separation of the alcohol license from this kind of activity. When alcohol is combined nude dancing activities, problems are increased. The language in the bill specifies that a person may not dance, promenade, or exhibit for the purpose of gaining drinks or soliciting beverages.

SEN. GRIMES further introduced SB 356. This bill includes the indecent exposure statute. It would allow local governments and counties, that are not assumed, to provide more stringent indecent exposure laws than are currently in state code. Non-assumed counties are hampered from taking action because of problems in our code. When a person commits the offense of indecent exposure, the person must knowingly and purposely expose themselves in a way that is to cause affront or alarm in order to humiliate, arouse, or gratify. It has been very difficult for municipalities to apply this code. Lines 25 and 26 include the same language found in the 1979 Initiative, which allowed for similar local ordinances to provide greater penalties. This allows the local communities a right to pass ordinances on indecent exposure which are more strict than currently available under our state code.

Testimony by a former stripper was presented to the Committee, **EXHIBIT(jus32a01)**. A letter was also read into the record, **EXHIBIT(jus32a02)**.

{Tape: 1; Side: B}

Proponents' Testimony:

Dallas D. Erickson, Montana Citizens for Decency through Law, Inc., presented his written testimony, **EXHIBIT(jus32a03)**.

Duane Halverson, Townsend, presented his written testimony, **EXHIBIT(jus32a04)**.

Edie Ward, Three Forks, presented her written testimony, **EXHIBIT(jus32a05)**.

David Ford, Minister, Church of Christ, Three Forks, presented his written testimony, **EXHIBIT(jus32a06)**.

{Tape: 2; Side: A}

David Carroll, Community Bible Churches, asked the Committee to preserve our heritage of freedom to raise our families with a moral fabric in our society that transcends short-term economic gain and momentary sexual gratification. He remarked Ted Bundy murdered 28 women in a violent way. He has read Mr. Bundy's testimony which was given seventeen hours before his execution. Mr. Bundy has stated that pornography and alcohol in concert drove him into the pit of hell. Additional handouts from Mr. Carroll, **EXHIBIT(jus32a07)**.

Rod Palmer, Citizens Against Sexual Exploitation, presented his written testimony, **EXHIBIT(jus32a08)**. He provided another handout of signatures of people who are in support of SB 256 and SB 365, **EXHIBIT(jus32a09)**.

Jackie Smith, Billings, rose in support of SB 256 and SB 365. As a wife, a mother of twelve children, and a grandmother of 30 children, she urged passage of these bills. One night when they were picketing at Planet Lockwood, a woman asked for a sign to carry. She stated her husband was inside the establishment. When a man walks out of the door of a strip joint, he carries his thoughts with him wherever he goes and those thoughts do affect his actions.

James Ward, Three Forks, presented his written testimony, **EXHIBIT(jus32a10)**.

Chris Jones, Director of the Coalition for Community Responsibility, stated research has shown that sexually oriented businesses have a direct negative impact on communities. Numerous studies have shown that the increases in crime are violent and sexual in nature. He provided several handouts **EXHIBIT(jus32a11)**, **EXHIBIT(jus32a12)**, and **EXHIBIT(jus32a13)**.

Sharon Neilson, Townsend, presented her written testimony, **EXHIBIT(jus32a14)**.

Susan Keddy Jones, Missoula, remarked that after hearing about the incomes of the employees of strip clubs, she and a friend decided to visit a local strip club. They were very apprehensive but did sit down a safe distance from the entertainment. They were appalled by the actions of the dancers. A club of this

nature is near a home of a friend of her daughter. She stressed the importance of keeping alcohol separate from nude dancing.

{Tape: 2; Side: B}

Charlotte Lewis, Townsend, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a15)**.

Dawn Thompson, Townsend, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a16)**.

Shannon Bennett, Missoula, presented written testimony from Karen Sanders, **EXHIBIT(jus32a17)**.

Bob Bottomly, Townsend, rose in support of SB 265 and SB 356, he provided a handout for Committee members, **EXHIBIT(jus32a18)**.

William Rockwell, Townsend, presented his written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a19)**.

Stuart Galgerud, Willow Creek, presented his written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a20)**

Tina Galgerud, Willow Creek, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a21)**.

Judith Rockwell, Townsend, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a22)**.

Clayton Rockwell, Townsend, presented his written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a23)**.

Pamela Rockwell, Townsend, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a24)**.

Betty Whiting, Montana Association of Churches, presented a position statement on behalf of the Montana Association of Churches, **EXHIBIT(jus32a25)**.

Gilda Clancy, Montana Eagle Forum, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT(jus32a26)**.

Lani Candelora, Montana Catholic Conference, rose in support of SB 265 and SB 356.

Steven Geisser, Townsend, rose in support of SB 265 and SB 356.

Kristi Geisser, Townsend, rose in support of SB 265 and SB 356.

Julie Milliam, Executive Director of Montana Family Coalition, presented her written testimony in support of SB 265 and SB 356, **EXHIBIT (jus32a27)**.

Kenneth Romo, Townsend, rose in support of SB 265 and SB 356.

Janis Clyde Mackenson, Townsend, rose in support of SB 265 and SB 356.

Randy Nielsen, Townsend, rose in support of SB 265 and SB 356.

REP. SCOTT MENDENHALL, HD 39, CARDWELL, rose in support of SB 265 and SB 356.

Opponents' Testimony:

Mark Staples, Montana Tavern Association, noted there are only five or six of these clubs in the state. He further stated that it was not a good idea for strip clubs to be separated from alcohol, because the establishments selling alcohol are highly regulated by the state. The patrons need to be 21 years of age and the employees are professionally trained persons. He has not been able to find any connection between criminal activities and strip clubs in Montana. There is no question that there is a moral outrage. There is a group of people who are opposed to strip clubs but a lot of Montanans do have a "live and let live" attitude about these clubs. No one is forced to go into these clubs. He has talked to many of the entertainers and does not believe they are exploited by the businesses. They do not see this occupation as a career path. Most people in service industries see their jobs as stepping stones. Many of the dancers believe television ads, newspaper ads, and Victoria Secret catalogues contain people more scantily clad than some of the women and men who perform in strip clubs. Some people do find strip clubs offensive but there are a lot of things we find offensive in our society. There is a guy who attacks him with Christian invective every time he walks down a certain street in Missoula. He asks him whether he has been saved, will he repent, and does he know about the fires of hell? **Mr. Staples** claimed he is quite secure in his relationship with God and doesn't need people constantly bothering him with their questions. However, they have a right to do so and he tolerates it. Hopefully, our moral and behavioral foundations are not so feeble that a couple of drinks would separate responsible behavior from irresponsible behavior. This legislative session is stacked with DUI bills. If the person is guilty of DUI, he is already a criminal. Nothing in these bills will change that. If people have a tendency to dive into a sexual fantasy, studies have shown they will accomplish that with the underwear section of the Sears

catalogue. If a wife is standing outside the club and is unable to get her husband to leave, that marriage was in trouble before the establishment moved into the neighborhood. Christians were persecuted for centuries and they still are in many countries. In this country we have freedom of religion and we also have the freedom to be free from religion. He has defended the Church Universal and Triumphant. Certain people did not feel that they and/or their religion was acceptable. He was just as ardent in his defense of their religious liberty as he is in the defense of the freedom of expression of strip club employees.

Dave Ohler, Self, remarked that he is a musician who plays in a band. Part of their act includes leaving the stage and dancing with the audience while playing instruments. Sometimes they will bring a member of the audience onto the stage and he or she will sing along with them. Under this bill, they would no longer be able to continue this portion of their performance. The bill is overly broad and contains serious First Amendment problems. Part of the bill prohibits dancing and promenading. Shania Twain was dancing and promenading during the Super Bowl half time show. This bill would prohibit her from performing in a bar in Montana. He asked for a do not pass recommendation on SB 265.

Virginia Clark, Sagebrush Sam's, presented her written testimony in opposition to SB 265 and SB 356, **EXHIBIT(jus32a28)**.

{Tape: 3; Side: A}

Shirl Nelson, Planet Lockwood, stated that Planet Lockwood is owned and managed by a woman. There are 15 full time employees who are mostly women working to support their families. When they opened the club, Planet Lockwood's taxes had been in arrears for three years. To date, all taxes are paid and current. Their profit has tripled. When their establishment consisted of a casino, they offered the same promotions as everyone else. The girls who work for them sign contracts and have absolutely no contact with the patrons. Taxicabs are available for people who have been drinking and the establishment pays for this service. There are no problems in regard to criminal behavior or prostitution. By simply driving by Planet Lockwood, one would not know it is a gentleman's club. Certain customers stay in the casino and bar area and never go beyond the closed doors. She provided letters from two property owners near Planet Lockwood, **EXHIBIT(jus32a29)** and **EXHIBIT(jus32a30)**.

Bruce Fowler, Moulan Rouge, Missoula, presented his written testimony, **EXHIBIT(jus32a31)**. He also provided an additional handout, an article by Michael Moore of the Missoulian, **EXHIBIT(jus32a32)**, pictures of his establishment,

EXHIBIT(jus32a33), and an article by Mick Holien of the Missoulian, **EXHIBIT(jus32a34)**. He also noted a letter from the Missoula Food Bank in appreciation of the Moulan Rouge for a donation of 100 turkeys. He further provided a list of 322 signatures of people in opposition to SB 265 and SB 366, **EXHIBIT(jus32a35)**.

Laurie Watkins, Moulan Rouge, Missoula, presented her written testimony, **EXHIBIT(jus32a36)**.

Alicia Riesinger, Exotic Dancer, stated that her income not only pays her tuition at the University of Montana, but also allows her to work and attend class. She enjoys being an exotic dancer. She is one year away from completing her degree. If alcohol is separated from dancing, there will be numerous juice bars in the state. These establishments will allow 18-year olds to be patrons, they will be opened 24 hours a day, and they will not be regulated by the state. Dancing is not prostitution. It is a form of artistic expression and entertainment on a stage. This entertainment is the same as entertainment by a musician or a belly dancer.

Eva Zazac, Moulan Rouge, remarked that as a cocktail waitress at the Moulan Rouge she has not had any problems with customers. If someone has had too much to drink, they are provided a ride home. The dancers at the Moulan Rouge are very talented dancers. If she lost her job, it would be very difficult for her to find employment in Missoula.

Heather Farlan-Anderson, Fred's Lounge, Missoula, stated she was present at the hearing on behalf of **Jo Craig, Owner and Operator of Fred's Lounge**. **Ms. Craig** has owned and operated this establishment for 20 years. She has worked closely with local and state authorities to maintain and ensure compliance of all laws. The county attorney and the sheriff's office have not reported secondary affect problems due to Fred's Lounge. Employees are trained and are aware of state and county laws. In 2002, 113 W-2 Forms and eight 1099 Forms were mailed out by Fred's Lounge. No one under the age of 21 is allowed into their club. A sign is posted on the entrance to the lounge that there is exotic dancing within that establishment. No one is required to consume alcohol. They offer juice, water, soda pop, etc. The dancers are not required to consume alcohol. Dancers at Fred's Lounge are from Wyoming, Oregon, Idaho, and Washington. Part of the money they earn in Missoula is spent in Missoula. Employees are tested for drugs.

Jody Wians-Gill, Cocktail Waitress at Fred's Lounge, remarked that her husband is a singer in a band. The income for their entire household is dependent on these bills not passing.

{Tape: 3; Side: B}

James Halo, Billings, stated he owns a night club in Billings. On ten to twelve nights a year, traveling groups are the entertainment at his establishment. These are the biggest nights of the year for him. Approximately 1,000 people attend on those nights. On a weekly basis, approximately 500 people choose to drive all the way out to Planet Lockwood. These people vote, with their money, that this particular business should continue doing business in it's present capacity. He provided a copy of Flanigan's Enterprises, Inc. of Georgia v. Fulton County, Georgia, **EXHIBIT (jus32a37)**. In this case, Fulton County passed an ordinance which prohibited nude dancing clubs from having liquor licenses. The clubs contested the suggestion that nude dancing clubs led to undesirable secondary effects. A scientific study was conducted to evaluate this assertion. The secondary effects were increased crime, blithe, and decreased property values. The study concluded that none of the secondary effects were created in Fulton County. The County hired its own study and its study concluded the same results, that there were no adverse secondary effects. The bill passed but the Eleventh Circuit Court threw it out employing the "O'Brien test". This is a four-part test. It includes that legislation was passed that served a substantial interest within the power of the government. This law needs to be passed to stamp out crime, blithe, and decreased property values. He further referred to another handout, "Measuring Secondary Effects of Adult Businesses using Spatio-Temporal Estimation of Real Estate Price Appreciation", **EXHIBIT (jus32a38)**. This study states that each study area showed a lower rate of violent crime, including rape, than was shown in their matched non-adult area. In addition, the rate of child molestation was higher in the non-adult areas than it was in the adult areas. Another part of the test is the ordinance furthers that interest. The purpose of this bill is the suppression of free expression. The justifications given do not stand up under scientific scrutiny. Another part of the test is that there is no less restrictive alternative.

In regard to the limitation of the stage, a ten foot rule would put Planet Lockwood out of business. There is no part of the clubroom where there would be ten feet between the edge of the stage and the exterior wall of the building. He is not aware of any facts that STD germs are capable of pole-vaulting ten feet. This law will outlaw kareoke, restaurant maraca bands, in prov troops, dinner theater, hypnotists, etc. The portion of the bill

that will not allow anyone to dance, promenade, or exhibit for gain, drinks, hire, or the solicitation of orders for alcoholic beverages, would outlaw bartenders, cocktail waitresses, and wine stewards.

He further provided a handout entitled, "An Examination of the Assumption that Adult Businesses are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina", **EXHIBIT(jus32a39)**.

In regard to giving local governments control over Title 45 crimes, this could be a slippery slope that should be avoided.

Mike Fellows, Missoula, remarked the free market system and education work very well. There are other ways to address this alleged problem rather than using the force of law.

Melvin Beattie, Nature's Action Committee, commented they advocate wholesome acceptance of the human body without the shame often attached to it. The State of Montana has one of the strongest anti-nudity laws in the country. There is simply no point or purpose to allow local governments to make laws which are harsher. If the purpose of the law is to put teeth into an ordinance regulating adult entertainment, then SB 356 misfires. It is more likely to have its greatest impact on naturists and nudists who, under existing Montana law, already face a fine of \$10,000 and up to 100 years in prison.

Rich Bfaff, Missoula, stated persons at the Moulan Rouge are there for one reason and that is to see the ladies. Other establishments have a lot of confrontation, this is not the case at the Moulan Rouge.

Erin Joseph, Sagebrush Sam's, rose in opposition to SB 265 and SB 356. She remarked that she believes in legal capitalism.

David Blackwell, Self, rose in opposition to SB 265 and SB 356.

David Hanson, Owner of Teasers, rose in opposition to SB 265 and SB 356.

Jacqueline Lenmark, Montana Coalition for Privacy and Free Expression, rose in opposition to SB 265.

Scott Crichton, American Civil Liberties Union, rose in opposition to SB 265.

Edward Reap, Self, rose in opposition to SB 265 and SB 356.

{Tape: 4; Side: A}

Questions from Committee Members and Responses:

SEN. JEFF MANGAN remarked that there had been considerable testimony in regard to removing live entertainment from licensed bars. It was noted that this practice would increase the number of unregulated juice bars which could provide similar entertainment. **SEN. GRIMES** remarked that the additional bill, SB 356, would address some of these concerns.

SEN. MANGAN asked why local governments should be given the power to change our criminal code. **SEN. GRIMES** remarked that this is allowed in the obscenity statute and, therefore, would not set a new precedent.

SEN. MANGAN further asked if prohibited additional conduct in SB 356 may be too broad. **SEN. GRIMES** did not believe it was. The local community would need to consider the constitutional framework. The county attorney and other experts would provide guidance.

SEN. BRENT CROMLEY noted SB 356 was an attempt to place the decision making on the local level. However, SB 265 would remove this issue from the local level and give the power back to the state. **SEN. GRIMES** maintained three options were provided. Even if measures in SB 365 were enacted, it may not afford all the protections local communities may wish to have in place. A position can be taken at the state level to enact a statute on a statewide basis to solve some of the problems and then allowances can be made for local latitude specifically related to indecent exposure.

SEN. DAN MCGEE noted that **Harris Heimes** wanted to make a comment in regard to a U. S. Supreme Court Case. **Mr. Heimes** provided a copy of City of Erie, et al., v. Pap's, EXHIBIT(jus32a40). He explained the City of Erie adopted a code that banned all public nudity. This was upheld by the U.S. Supreme Court. Applying the O'Brien standard, the Court concluded that Erie's ordinance was justified under O'Brien. The first factor is whether the government regulation is within the constitutional power of the government to enact. Erie's efforts to protect public health and safety were clearly within the city's police powers. The second factor was whether the regulation furthers an important or substantial government interest. The asserted interest regulating conduct, through a public nudity ban, and of combating

the harmful secondary effects associated with nude dancing are undeniably important. In terms of demonstrating that such secondary effects pose a threat, the city did not need to conduct new studies or produce evidence independent of that already generated by other cities to demonstrate the problem of secondary effects. Erie's ordinance is, on its face, a content neutral restriction that regulates conduct, not First Amendment expression. The government should have sufficient leeway to justify such a law based on secondary effects. In the O'Brien case, the court did not require evidence that the integrity of the Selective Service System would be jeopardized by knowingly destructing or mutilating draft cards.

The ordinance also satisfied O'Brien's third factor, that the government interest was unrelated to the suppression of free expression. The fourth factor, that the restriction is no greater than is essential to the furtherance of the government interest, is satisfied as well. The ordinance regulating conduct and any incidental impact on the expressive element of nude dancing is *de minimis*.

SEN. MANGAN asked the sponsor to address the concerns of musicians and other non-nude entertainment concerns in his closing statement.

Closing by Sponsor:

SEN. GRIMES remarked he did not intend for the bill to unintentionally affect musicians or normal forms of entertainment. In regard to criminal issues, he believes the prosecutors truly know the events in the communities. The circumstances across the state in regard to these clubs show how far this blatant behavior will go without any recourse. It is our responsibility to balance these societal issues so we can live together peacefully. When an activity becomes extreme and pervasive, it is time to act.

ADJOURNMENT

Adjournment: 11:47 A.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/ JK

EXHIBIT (jus32aad)